IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1047 OF 1995

1.Shri Janardan Mahadu Bhende ... Appellant
(Orig.Claimant)

V/s

The Special Land Acquisition
Officer, Panvel, District Raigad ... Respondents
(Orig.Opponent)

Shri N.V. Walavalkar for appellant

Shri K.K. Tated for respondents

Coram : D.G. Deshpande, J.

Date : 15th February, 2005

P.C.

1 Heard Shri N.V.Walavalkar, the learned counsel for appellants and Shri K.K.Tated,AGP for respondents.

2 Area admeasuring 1970 sq.mtrs. of the total land situated at village Juhi Kamothe, Taluka Panvel was acquired for New Bombay Project under a notification dated 3.2.1970. The Special Land Acquisition Officer, Panvel awarded the meagre compensation to claimants/appellants, therefore, they have filed a reference under section 18 of

Land Acquisition Act. The lower court has awarded the compensation at Rs.12/- per square meter. Therefore, appellants have filed this appeal for the enhancement of compensation .

3 The learned counsel for appellants relies upon a judgment of division bench comprised of F.I.Rebello and S.R. Sathe,JJ in First Appeal No.757 of 2003 and Civil Application 514 of 2003 and First Appeal No.1782 of 2002 and Civil Application No.1078 of 2004. The learned counsel for appellants has drawn my attention to a judgment dated 31/3/2004 wherein a criteria fixed by a division bench for the determination of the compensation for the lands situated at village Juhi Kamothe, Taluka Panvel acquired for New Bombay Project. The division bench of Justice Rebello and Justice Sathe placed reliance upon a judgment of earlier division bench in First Appeal No.382 of 1984. Even considering a fact that the area under acquisition was for extending the municipal limits which was adjacent and encircling Panvel Town, the proximity of Bombay Pune Road,and Diva-Panvel Road to Bombay Pune National Highway.Considering the opinions noted on potentiality of the area, the compensation has been awarded at Rs.23.50 after deducting 10% towards development charges fixed at the market value of the land at Rs.21/-. The learned counsel for appellants therefore

contends that appellants were entitled to either Rs. 21/- or more than Rs.21/- per sq.mtr. as awarded on a reference by the lower court.

On the other hand, the learned Assistant Government Pleader has drawn my attention to another judgment of division bench comprising Justice A.P.Shah and Justice J.A.Patil in first appeal No.875 of 1985 dated 16.3.2000 wherein the lands were acquired from the villages Pendhar, Taloja, Panchand, Owe, Belpada and Kharghar in Panvel Taluka in Raigad District for New Bombay Project. In the said judgment, the division bench of Justice Shah and Justice Patil have relied upon the judgments of Apex Court in deciding number of appeals of the same area. A criteria in that case was fixed about distance between Bombay Pune National Highway and land in question. In this regard, Mr. Walawalkar, learned counsel for appellants contends that distance between land in question and Bombay-Pune National Highway is about 4 kilometer i.e.4000 meters. He further contends that in a recent judgment of Justice Rebello and Justice Sathe other factors have been taken into consideration and compensation at Rs.21/- per square meter has been awarded. Those factors are required to be taken into consideration while fixing the compensation in this case. On the other hand, the learned Asstt. Government Pleader has drawn my attention to the fact that land under

acquisition is not within municipal limits but it is away from municipal limits. He contends that land was purely used for agricultural and claimants have admitted that water about one and half feet used to accumulate in this land.There is no irrigation or electricity facility available. The valuer, Mr. Jeevan Kulkarni has admitted that he has not taken into consideration the income capitalisation method. Neither the claimants nor the valuer disclose how much income was getting from the acquired land. The fact that the agricultural lands in village Kamothe are adjacent to Jawahar Industrial Estate and, therefore, the factors which were considered by a division bench comprising Justice Rebello and Justice Sathe are not attracted in this case. He further contends that in the earlier appeal decided by a division bench comprising Justice A.P.Shah and Justice J.A. Patil wherein they have admitted one standard viz. distance of acquired land from Bombay-Pune National Highway. Considering distance of acquired land which is 4 kilo meter from Bombay-Pune National Highway, the compensation awarded by the court at Rs.12/- per square meter was proper. He contends that there was no case regarding the enhancement of compensation.

It is true that in a judgment of division bench comprising Justice Rebello and .Justice Sathe, the main factor was the land acquired was within municipal

limits. In my opinion, distance between acquired land and Bombay Pune National Highway would be a proper basis for fixation of market price of the land. In order to resolve this controversy it is necessary to refer the evidence led by the party i.e. claimants.In cross examination, claimant has admitted that the land was used for agricultural purpose only and certain lands in village Kamothe were converted into non-agricultural. In the year 1970 facilities like water, road and electricity were not available to the land in question. For going to village Kamothe 15-20 minutes were required by walk. There was a bund at distance of 10 feet from the acquired land. It was raised to prevent sea water from entering in the acquired land. In rainy season, the water accumulated in the acquired land at the height of 1 to 2 feet. No construction took place at adjoining acquired land and he has no documentary evidence to show that the acquired land would have fetched value of Rs.15/- or 16/- per square meter.

Secondly , in his evidence Mr.Kulkarni, expert valuer of the claimant has given following particulars.

1)Bombay -Pune National High way No.4	3600 M.E.
2)Sion-Panvel Highway	2560 M.E.
3)Jawahar Co-operative Industrial Estate,Kamothe	2600 M.E.
4)MIDC Industrial Estate,Taloja	7000 M.N.E.

5) Panvel Industrial Estate	4520	M.S.E
6) Panvel Municipal extended limit	1600	M.S.
7) Panvel S.T.Stand	4600	M.S.E
8) Panvel Railway Station	4900	M.S.E
9) Jui Kamothe Gaothan	800	M.E.

It is clear from the above description that acquired land is totally secluded from all the above factors which are require to be taken into consideration. Coupled with defects viz. accumulation of water in the land and absence of developmental activities, compensation awarded appears to be proper. The learned counsel for appellants alteratively and lastly contends that while awarding the compensation, the lower court has not granted any benefits under section 34 of Land Acquisition Act.The learned Assist. Government Pleader concedes that appellants/claimants will be entitled for benefits under section 34 of Land Acquisition Act. Therefore, I pass following order:

ORDER

Appeal is partly allowed.

There is no change in compensation awarded , but appellants/claimants will be entitled to all the benefits under section 34 of Land Acquisition Act.

No order as to cost of this appeal.

(D.G.Deshpande,J.)